IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1903 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVINDBHAI JETHABHAI VASAVA - Appellant(s)

Versus

THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BS SUPEHIA for Appellant(s) : 1,
MS ML SHAH APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 23/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellant-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 25th September, 2006 passed by the learned Sessions Judge, Narmada at Rajpipala in Sessions Case No.25 of 2006 whereby he was sentenced to undergo rigorous imprisonment for life and fine of Rs.1000/-, in default, to undergo further 6 months S.I. for the charge under Section 302 of the Indian Penal Code. He was also sentenced to undergo 2 months S.I. and fine of Rs.100/-, in default, to undergo further 10 days S.I. However, he was acquitted for the charge under Section 504 of the I.P.C.

2. Short facts of the prosecution is that the complainant viz., Nareshbhai Arvindbhai Vasava is residing at Jitnagar Village, Taluka Nandod, District Narmada along with his family and doing labour work for running their livelihood. The appellant-accused viz., Arvindbhai is having habit of drinking liquor and, hence, he used to quarrel

for small thing like making of food, labour work etc. and also used to beat his mother. Hence, prior to this incident, the complainant gave complaint before Rajpipla Police Station against his father for harassing them. On 04.05.2006 in the evening at about 4 o'clock, the altercation took place between the mother of the complainant and the appellant-accused and, hence, the complainant tried to intervene and told him not to quarrel and, therefore, the appellant-accused left the house. On 05.05.2006 in the early morning at about 5 o'clock, he came back and started giving abuses to the mother of the complainant. As a result of that, other family members woke up and told him not to quarrel. As a result of that, the appellant-accused got excited and took axe from the house and gave 2-3 blows on the neck of the deceased. At that time, the appellant-accused also threatened to beat. The deceased fell down and succumbed to the injuries and, thereafter, the appellant-accused left the scene of offence. The complainant, thereafter, informed the P.S.I., Mr.J.K. Patel. P.S.I., Mr.Patel accompanied by the complainant came to the place of offence, where they found the dead body of the deceased. At that time, the appellant-accused tried to hang himself on the tree with the help of

clutch wire of scooter and, therefore, the Police personel took him out and sent him to Government Hospital, Rajpipla for treatment. Accordingly, complaint came to be registered being C.R.No.I-85/2006 for the offence under Sections 302, 309 and 504 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. On the basis of the complaint, the investigation commenced. The inquest panchnama and offence place panchnama were drawn, seized clay, axe, clutch wire from the place of offence under the panchnama, recorded the statements of concerned witnesses, arrested the appellant-accused and sent the muddamal to FSL. On arrival of the FSL Report, it has been kept with the investigation file. After completion of the investigation and, on the basis of the material collected against the appellant-accused, since the Investigating Officer found a prima facie case against the appellant-accused, he submitted charge-sheet before the Learned Chief Judicial Magistrate, Rajpipla, which came to be registered as Criminal Case No.2408/2006. Since the case registered against the appellant-accused was exclusively triable by the Court of Sessions, the Learned Chief Judicial Magistrate, Rajpipla committed the case to the Court of Sessions under

Section 209 of the Criminal Procedure Code vide order dated 01.08.2006, which came to be numbered as Sessions Case No.25/2006. The Court below framed charge vide Exh.6 for the offence under Sections 302 and 504 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the guilt against the appellant-accused, the prosecution examined the following witnesses :-

(1) Prosecution Witness No.1 viz., Dr.Minaxi Chimanbhai Chauhan (Medical Officer, Exh.8.

(2) Prosecution Witness No.2 viz., Nareshbhai Arvindbhai Vasava (Eye Witness), Exh.12.

(3) Prosecution Witness No.3 viz., Nikulbhai Arvindbhai Vasava (Witness), Exh.13.

(4) Prosecution Witness No.4 viz., Dilipbhai Karshanbhai Parmar (Medical Officer), Exh.26.

(5) Prosecution Witness No.5 viz., Jitendrakumar Kanubhai Patel (Investigating Officer), Exh.31.

(6) Prosecution Witness No.6 viz., Jashwantbhai Nimabhai Gamit (Investigating Officer), Exh.33.

(7) Prosecution Witness No.7 viz., Kanjibhai Maganbhai (Witness – Hostile), Exh.14.

5. The prosecution also relied on following important documentary evidence viz., scene of offence panchnama at Exh.14, inquest panchnama at Exh.15, seizure panchnama of clothes of the deceased at Exh.16, panchnama of body position of the accused at Exh.17, arrest panchnama of the accused at Exh.18, map prepared by Circle Inspector at Exh.19, receipt of the FSL at Exh.20, forwarding letter at Exh.22, Serological report at Exh.23, notification of the District Magistrate at Exh.24, P.M. Note at Exh.29 and complaint at Exh.32.

6. On submission of closing purshis by the prosecution, the learned Sessions Judge recorded the further statement of the accused under Section 313 of the Criminal Procedure Code. The learned Sessions Judge, Narmada at Rajpipla, after considering and appreciating the evidence on record was of the view that the prosecution has successfully established the guilt against the appellant-accused for having committed offence punishable under Section 302 of the Indian Peal Code and under Section 135 of the Bombay Police Act and, therefore, he accordingly, passed the order of conviction and sentence against the appellant-accused as stated hereinabove.

7. Being aggrieved and dissatisfied with the judgment

and order of conviction dated 25th September, 2006 passed by the learned Sessions Judge, Narmada at Rajpipla, the appellant-accused has sent this appeal through jail authority. On receiving the same, it has been numbered as Criminal Appeal No.1903/2006 and same has been handed over to the learned counsel, Mr.B.S. Supehia to appear as amicus curiae.

8. We have heard learned counsel, Mr.B.S. Supehia for the appellant-accused and learned Additional Public Prosecutor, Ms. M.L. Shah for the State at length. We have been taken through the record and proceedings lying with the Court.

9. Mr.Supehia, the learned Advocate who appears on behalf of the appellant-accused has contended that the learned trial Judge has committed a grave error in recording the judgment ad order of conviction and sentence. It has been mainly argued by him that the appellant-accused has been falsely involved into the crime in question and the eye witnesses are interested witnesses. The prosecution has failed to establish the nexus between the incident and the role of the present appellant-accused. After taking us through the complaint at Exh.32, P.M.Note at Exh.29 and evidence of P.W.No.4 viz., Dr.Dilipbhai Karshanbhai Parmar at Exh.26 along

with the oral evidence of P.W.No.2 viz., Nareshbhai Arvindbhai Vasava at Exh.12 and P.W.No.3 viz., Nikulbhai Arvindbhai Vasava at Exh.13, he argued that both these witnesses are sons of the deceased as well as the appellant-accused. It is also argued that at the most, it can be said that the incident has occurred due to sudden provocation and, therefore, it cannot be said that case falls under Section 302 of the Indian Penal Code, but under Section 304 Part-2 of the Indian Penal Code and, hence, it is requested that the appellant-accused is required to be convicted under Section 304 (Part–2) of the Indian Penal Code. No other arguments have been advanced by the learned counsel for the appellant-accused.

10. Ms.M.L. Shah, learned Additional Public Prosecutor, who appears on behalf of the respondent-State has taken us through the reasons recorded by the learned Sessions Judge and submitted that no interference is called for as the prosecution has established the case against the appellant-accused beyond reasonable doubt. There are sufficient evidence available on record to connect the appellant-accused with the crime in question. Ms.Shah has submitted that it is not case of sudden provocation, but it is a case, wherein the

appellant-accused killed his wife in presence of her family members. Prior to the incident, there used to be quarrel between the deceased and the appellant-accused and complaint to that effect was also lodged. Even, a day prior to the incident, altercation took place between the deceased and the appellant-accused and the appellant-accused left home and on the very next day i.e. on the day of incident, he came and started quarreling with the deceased and, thereafter, he took out axe and gave two to three blows on the neck of the deceased. Therefore, according to her, it cannot be said to be a case of sudden provocation. It is submitted that the weapon used by the appellant-accused is admittedly a deadly weapon and the part which selected by the appellant-accused is a vital part of the body i.e. neck and two to three blows were given by the accused, which established the clear intention and, therefore, no lenient view should be taken. According to her, it is a clear case of murder and, hence, it will not fall under Section 304 (Part-2) of the Indian Penal Code. She has taken us through the evidence of the complainant and other witnesses and argued that it is true that the complainant is the son of the deceased as well as the appellant-accused and, therefore, it cannot

be said that he is an interested witness to see that his father should be convicted. On the contrary, he is balance witness and his presence at the time of incident is natural one. She has also taken us through the P.M.Note, panchnama of scene of offence, FSL Report and Serological report and submitted that the prosecution is able to prove the case against the appellant-accused beyond reasonable doubt. Ms.Shah has, therefore, urged that the learned trial Judge was perfectly justified in coming to the conclusion that the appellant-accused was the author of the crime. Raising the abovesaid contentions Mr.Shah has urged that the present appeal deserves to be dismissed.

11. We have dispassionately considered the arguments advanced by the learned counsel for both the parties. We have thoroughly scrutinised the entire evidence led by the prosecution and have also perused the impugned judgment. We have also gone through the Record and Proceedings called for from the trial Court. We have gone through the evidence of P.W.No.2 viz., Naresh Vasava at Exh.12 along with the complaint at Exh.22 and also evidence of P.W.No.3 viz., Nikul at Exh.30. Both the aforesaid witnesses are the sons of the deceased – Gangaben and the appellant-accused – Arvind. It is also

established from the oral evidence of these witnesses that they were sitting in the same house. They are the eye witnesses and as established from the evidence on record, a day before the incident i.e. in the evening of 04.05.2006, the appellant-accused started quarreling with his wife i.e. the deceased and at that time the complainant tried to intervene and, therefore, the appellant-accused left the house. On the very next day i.e. on 05.05.2006, he came in the early morning at about 5 o'clock, when the family members were sleeping and, thereafter, he started quarreling with the deceased for a considerable period of two hours and, thereafter, the appellant-accused took out axe from his house and gave 2-3 blows to the deceased on her neck. As a result of that, she fell down and succumbed to the injuries. Hence, the complainant went to Rajpipla Police Station and filed the complaint at the earliest at 9:30 a.m. On registration of the complaint, the P.S.I. immediately visited the place of offence. This witness has been cross-examined, but nothing contrary came out and this witness seems to be a witness of truth.

12. Another eye witness i.e. P.W.No.3 viz., Nikul, who is brother of the complainant at Exh.13 has also

given similar version as given by the complainant along with the role and act of the appellant-accused. Not only that, both have identified the clothes, axe and other muddamal. He has deposed that he has shown the place of offence to the panchas and panchnama to that effect was prepared in his presence.

13. The prosecution has also got support from the evidence of P.W.No.4 viz., Dr.Dilipbhai Karshanbhai Parmar at Exh.26, who is the Medical Officer and who has performed the postmortem of the deceased. From the evidence of this witness, the prosecution was able to prove that it is a case of homicidal death and the injuries received by the deceased are possible by way of wooden axe. He also proved the postmortem note at Exh.29. So, prosecution was able to prove that it is a case of homicidal death and the appellant-accused is the assailant.

14. The eye witness are the sons of the appellant-accused and prior to the incident, altercation took place for a considerable period of two hours and, therefore, question of misidentification or falsely involving the appellant-accused in the crime in question may not be arisen. Merely because the appellant-accused has tried to commit suicide is not ground for showing mercy to the appellant, more

particularly when, he has killed his own wife by giving 2-3 axe blows. The part selected is the vital part of the body i.e. neck and, hence, intention is very clear and, therefore, it cannot be said to be a case falling under Section 304 (Part-2) of the Indian Penal Code. It is true that the eye witnesses are the sons of the victim as well as of the appellant-accused and, therefore, we have gone through their evidence minutely and keeping in mind all relevant consideration, we are of the opinion that their evidences are natural one, trustworthy and reliance can be placed upon them. Not only that there are scientific evidence of FSL, which also supports the prosecution case. Under the circumstances, no interference is called for in the impugned judgment and order of conviction and sentence.

15. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement

with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

16. In these circumstances, it is a fit case, wherein appeal is required to be dismissed.

17. The appeal is hereby dismissed.

(R.P.DHOLAKIA, J.) (M.D. SHAH, J.)

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